Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL, MNSDB-DR, FFT

Introduction

This hearing dealt with cross-applications filed by the parties. On July 14, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 19, 2021, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Landlord and both Tenants attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

At the outset of the hearing, the Landlord requested an adjournment because she was not prepared to proceed due to a surgery that she underwent approximately two weeks ago, and due to contracting COVID approximately a month ago. She did not provide any medical documentation to corroborate any of these submissions.

It was brought to her attention that there is a note on the file that she contacted the Residential Tenancy Branch in July 2021 to advise that she was “really sick” and possibly not able to serve the Notice of Hearing packages and documentary evidence. As well, she was provided with information to serve the packages in accordance with the timeframes in the Rules of Procedure (the “Rules”). Furthermore, she was provided information that she could serve her evidence at a later point when she was feeling better, and she was provided with the deadlines for service of evidence.

During the hearing, she did not explain the nature of her sickness except to indicate that she had “lots of medical conditions going on.” However, she did not elaborate on what these conditions were, she did not provide a timeframe for how long they went on for, and she did not provide any medical documentation to substantiate the validity of these claims.

The Tenants were asked to make submissions on the Landlord’s adjournment request. They advised that they opposed this request as they have already waited half a year for this hearing.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. I note that the Landlord had approximately six months to prepare and submit her evidence on this file. Despite her not submitting any medical documentation to corroborate her surgery two weeks ago or that that she contracted COVID a month ago, I accept that these circumstances were possible; however, this would only account for the last month prior to the hearing.

I note that the Landlord has not provided any medical documentation to account for her “medical conditions” in July 2021. As such, I am not satisfied that there is sufficient evidence to support a conclusion that the Landlord was unable to submit and serve her evidence in the many months leading up to her bout with COVID and the recent surgery. In addition, I find it important to note that had the Landlord been suffering from some medical conditions, from July 2021 onwards, that prohibited her from submitting and serving her evidence, she could have had someone act of her behalf to do this for her.

When reviewing the Landlord’s submissions with respect to an adjournment request, I found her testimony to be suspect and unpersuasive. In addition, given the lack of medical documentation provided, I found her submissions to be dubious in nature and this caused me to question her credibility. I am satisfied that the Landlord had a significant amount of time to prepare for this hearing and to serve and submit her evidence. Furthermore, the Landlord was advised by an Information Officer on July 29, 2021 of the deadlines to submit and serve evidence. Given that she was informed of this, I find it reasonable that the Landlord had sufficient time to enlist someone to assist her if she was unable to do any of this herself.

As I am doubtful of the reliability and credibility of the Landlord, I do not find that the criteria for an adjournment was satisfactorily met by the Landlord. I determined that adjourning the hearing would be prejudicial to the Tenants. As such, I did not allow the Landlord's request for an adjournment.

The Landlord advised that she served each Tenant a separate Notice of Hearing package by registered mail; however, she was not sure when she did this. Tenant C.G. confirmed that they received two Notice of Hearing packages at the end of July 2021. Based on this undisputed testimony, I am satisfied that the Tenants have been duly served with the Landlord's Notice of Hearing packages.

The Landlord did not submit any documentary evidence for consideration on this file.

The Tenants advised that they served the Landlord their Notice of Hearing and evidence package by registered mail on August 21, 2021 (the registered mail tracking number is noted on the first page of this Decision). C.G. stated that she did not check to see if the Landlord could view their digital evidence, that was on a CD, prior to serving it pursuant to Rule 3.10.5 of the Rules.

The Landlord acknowledged that she received this package; however, she then later changed her testimony and stated that her daughter "may have got" this package in August 2021, but the Landlord only received this package from her daughter in December 2021. As well, she stated that she could not view the Tenants' CD and that she made no attempts to view it. Based on the Tenant's testimony of having served the Notice of Hearing package by registered mail on August 21, 2021, and the accompanying tracking number, I am satisfied that the Landlord was deemed to have received this package five days after it was mailed. As such, I find that the Landlord was duly served the Tenants' Notice of Hearing and documentary evidence package. As such, I have accepted this documentary evidence and will consider it when rendering this Decision.

With respect to the Tenants' digital evidence, while the Tenants did not comply with Rule 3.10.5, I am satisfied that this CD containing their digital evidence was served on August 21, 2021. Given that the Landlord chose not to make an effort to view this CD despite having ample time to attempt to do so, I have accepted this digital evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?
- Are the Tenants entitled to a return of double the security deposit and pet damage deposit?
- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on May 1, 2017 and that the tenancy ended on June 30, 2021 pursuant to a Four Months' Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the "Notice"). Rent was established at $1,800.00 per month and was due on the first day of each month. A security deposit of $650.00 and a pet damage deposit of $200.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was not conducted with the original landlord and that a move-out inspection report was not conducted either.

They also agreed that the Tenants provided their forwarding address in writing sometime prior to the tenancy ending.

The Landlord advised that she is seeking compensation in the amount of **$3,832.50** because the Tenants left an enormous amount of property behind that the Landlord was required to pay to have disposed of. In addition, the Tenants did not clean the rental unit or leave it in a re-rentable state at the end of the tenancy. She stated that the rental unit was filthy, that there was pet damage, and that the toilets were disgusting. She testified that $700.00 to $800.00 of the amount of relief being sought was attributed to the cleaning costs.

Tenant J.C. advised that they left a significant amount of property behind; however, this was not their personal property as it belonged to the previous owner. With respect to the cleanliness of the rental unit, he submitted that they left the rental unit "much cleaner than when they got it" and that "under the circumstances, they tried to leave it in as

good as a condition as possible." He stated that they swept and that there was "mild dirt" left in the rental unit. He refuted that there was any pet damage.

C.G. also advised that the previous owner had stored much property in the rental unit and that nothing that was left behind was the Tenants' personal property. She stated that she did the majority of the cleaning, with the assistance of a family member, and that she started to clean approximately a week before the tenancy ended.

With respect to the Tenants' claims on their Application, the issues with respect to the security deposit and pet damage deposit will be addressed in tandem with the Landlord's Application. Regarding their claim in the amount of **$12.85** for the cost of a Land Title fee, there are no provisions in the *Act* to compensate the Tenants for this. As such, this is dismissed in its entirety.

In the Tenants' Application, they indicated that "I want my last months [sic] compensation, $1800 for the last month. She never gave this." However, they outlined this claim under a request for a return of the security and pet damage deposit. When the Landlord was asked if she understood this claim, she stated that she did not even read this on the Application. Given that this was clearly requested in the Tenants' Application, I accept that the Landlord was sufficiently made aware of this claim, despite her admitted failure to read the details of the Tenants' Application. Therefore, I find it appropriate to address this issue as well.

The Tenants advised that they are seeking compensation in the amount of **$1,800.00** because the Landlord served them the Notice on or around March 1, 2021 with an effective end date of June 30, 2021, for which they gave up vacant possession of the rental unit. J.C. stated that they paid rent in full for June 2021 and that the Landlord never compensated them one month's rent as indicated on page three of the Notice.

The Landlord acknowledged that she served this Notice on or around March 1, 2021, that she noted an effective end date of June 30, 2021, and that she accepted that the Tenants gave up vacant possession of the rental unit on this date, despite the effective end date on the Notice being incorrect. She confirmed that the Tenants paid June 2021 rent in full, and she acknowledged that she did not compensate them the one month's rent, as required, because she was upset at the state the Tenants left the rental unit in at the end of the tenancy.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that neither a move-in inspection report nor a move-out inspection report was conducted, I am satisfied that the Landlord did not complete these reports in accordance with the *Act*. As such, I find that the Landlord has extinguished the right to claim against the deposits.

Furthermore, Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' security deposit and pet damage deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, I am satisfied that the tenancy ended on June 30, 2021, when the Tenants gave up vacant possession of the rental unit, and that

the Tenants provided their forwarding address in writing on or before this date. As such, I find that the Landlord's Application was made within 15 days of the end of tenancy. However, as the Landlord's right to claim against the deposits was extinguished, I am satisfied that the doubling provisions apply to the security deposit and pet damage deposit in this instance. As such, I grant the Tenants a monetary award in the amount of $650 X 2 = **$1,300.00** and $250.00 X 2 = **$500.00**, totalling **$1,800.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claims for compensation in the amount of $3,832.50, the Landlord failed to submit sufficient evidence to support her claims for compensation. As noted above, I do not accept the Landlord's position that she was physically rendered incapable of submitting and serving her evidence in the months after she made her Application, or have someone else do so on her behalf, especially given that she was provided with the information on the evidence deadlines in July 2021.

I find it important to note that when the Landlord made her adjournment request citing a recent surgery and then short-term illness due to COVID, she coughed immediately after providing this testimony as if to emphasize her being unwell. However, at no other

point during the hearing did she ever cough again, nor did she demonstrate any difficulty in participating in the hearing. I find this added to my skepticism and reliability of the Landlord's testimony.

In addition, I note that she stated during the hearing that she could immediately submit relevant evidence to her file. Clearly this evidence was in her possession, and given that the tenancy ended approximately half a year ago, I can reasonably infer that she would have had this evidence in her possession for a considerable amount of time. Without any medical documentation supporting her claims of a long-term illness, in conjunction with the doubts that were created by the Landlord's questionable and unsubstantiated testimony, I find that I have significant concerns with the Landlord's credibility on the whole.

However, obviously there was a breakdown in the relationship between the Landlord and the Tenants at some point during the tenancy, and there was evident animosity. When reviewing J.C.'s testimony regarding the state that they left the rental unit in, he stated that they left the rental unit "much cleaner than when they got it" and that "under the circumstances, they tried to leave it in as good as a condition as possible." Despite C.G.'s claims of cleaning, I find that this supports a conclusion that little effort was made in returning the rental unit to a re-rentable condition. When reviewing the Tenants' evidence in conjunction with J.C.'s demeanour during the hearing, I found his attitude towards this tenancy to be juvenile and was consistent with a belief that they were only required to bring the rental unit up to a standard that they were originally provided at the start of the tenancy, and that the Landlord had to deal with the rest. Consequently, I am satisfied that the vagueness of J.C.'s testimony supports a finding that his credibility was lacking on this point as well.

While I am not satisfied that the Landlord has justified the full amount of her claim, I find it more likely than not that the Tenants did not leave the rental unit in a reasonable condition at the end of the tenancy. Even though the Landlord has submitted insufficient evidence to support the entire amount that she is seeking, I am satisfied that an award of **$500.00** for cleaning and disposal of property is reasonable given the evident ambivalence that the Tenants demonstrated.

With respect to the Tenants' claims for compensation in the amount of $1,800.00 for the compensation pursuant to the Notice, as the consistent and undisputed evidence is that the Landlord did not compensate the Tenants as required after serving the Notice, I grant the Tenants a monetary award in the amount of **$1,800.00** to satisfy this claim.

As the Landlord was not entirely successful in her claims, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this Application.

As the Tenants were not entirely successful in their claims and were somewhat negligent, requiring the Landlord to make an Application, I find that the Tenants are not entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Cleaning and disposal	-$500.00
Doubling of security deposit	$1,300.00
Doubling of pet damage deposit	$500.00
One month's compensation	$1,800.00
Total Monetary Award	**$3,100.00**

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$3,100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 29, 2022

Residential Tenancy Branch